

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

FILE: B-184155

DATE: February 26, 1976

MATTER OF: Free State Builders, Inc.

DIGEST:

Bid discovered in bid box after bid opening is not for consideration although bidder states that its bid was deposited in box prior to bid opening. In absence of independent evidence establishing when bid was deposited, integrity of competitive process requires bid not be considered.

Free State Builders, Inc. (Free State) protests the determination by the General Services Administration (GSA) that its bid on contract No. GS-03B-49531 was late and therefore was not eligible for award.

The invitation for bids was issued March 11, 1975, and provided that sealed bids in duplicate would be received until 1:30 p.m. on April 11, 1975, in room 1701, Regional Office Building. The President of Free State states that at 12:26 p.m. on April 11, he dropped his company's bid into a receptacle provided for receipt of bids. This "bid box" is described in GSA's report on the protest as follows:

"The bid room is equipped with a bid box set in the wall. From the hallway outside, bids may be dropped through a slot into the bid box inside the bid room. Whenever the flap on the slot is lifted, it activates a buzzer to alert personnel on duty in the bid room that a bid has been dropped. The bid box itself, which is inside the bid room, is 20 inches square; the front, facing employees on duty in the bid room, is a glass door in a 2 1/2" wooden frame. Personnel on duty in the bid room make it a practice to pick up bids from the bid box immediately whenever the buzzer sounds."

Notwithstanding Free State's allegation of timely bid submission, its bid was not discovered in the box until 1:48 p.m., after bid opening. GSA's report describes the circumstances surrounding discovery of Free State's bid as follows:

"At 1:15 p.m. on April 11, Mr. Robert Stevens, the GSA Contract Specialist who was to be in charge of bid opening on this contract, together with two assistants, went to the bid opening room. At 1:30 p.m., he was handed three bids for opening. He noted that no bid had been received from either Edward B. Friel, Inc., or Free State Builders, Inc., both of whom customarily bid on contracts of this type. Friel's bid was located on a table in the bid opening room among bids on another contract, but there was no bid from Free State. A representative of Free State, known to GSA personnel, was present during the time the search was made for bids from Friel and Free State, but made no comment on the absence of any bid by the firm he represented.

"After completion of bid opening, the GSA Contract Specialist and the two assistants left the bid opening room. At approximately 1:50 p.m., the Contract Specialist received a call from a GSA employee assigned to duty in the bid room advising that a bid from Free State had just been picked up from the bid box, and that she had stamped it in at 1:48 p.m."

GSA declared Free State's bid to be late. GSA reports that, at all times pertinent to the procurement, there were at least two people in the bid room (at least one of the two bid box custodians and a gentleman who was in the bid room preparing abstracts for an independent bid reporting service) and that, prior to 1:48 p.m., no one heard the bid box buzzer. Statements submitted by these parties indicate that no alarm was heard that day until 1:48 - 18 minutes after bid opening. On checking the bid box, two bids were discovered-one, the bid of Free State and, the other, a bid for a 2:00 p.m. bid opening. GSA questioned the bidder whose bid for the 2:00 p.m. opening activated the alarm at 1:48 p.m. and that individual stated that he did not submit two bids.

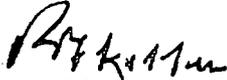
In addition GSA reports that none of the individuals present in the bid room, including the GSA employees participating in the bid opening, recalls checking the bid box. Therefore the only direct evidence bearing upon the time when Free State's bid was received is the statement of Free State's president that he dropped it in the bid box at 12:26. While no one actually saw him do so, an employee of GSA states that Free State's

president was at the GSA Regional Office Building at approximately 12:05 inquiring as to any special notices affecting the solicitation.

The most that can be said in behalf of considering Free State's bid is that the bid may have been deposited in the bid box prior to bid opening. Certainly, the GSA officials in charge of the bid opening should not have relied solely upon the buzzer alert system to detect timely bid deposits. They should have checked the bid box before proceeding with the bid opening to assure that all timely deposited bids were received. We trust that GSA will avoid a recurrence of this situation in the future.

However, the fact remains that the protester's bid was not in the hands of the Government officials until after bid opening and, aside from the bidder's own statements, there is no independent evidence to establish that the bid was out of the protester's control and in the bid box prior to bid opening. We have recognized that, under certain circumstances, a hand-carried bid delivered into the hands of bid room officials after bid opening may be considered for award if it can be conclusively determined that the bid was submitted to the Government prior to the bid opening and was not within the bidder's control thereafter. 51 Comp. Gen. 69- (1971. Here, however, there is no evidence other than that provided by Free State to establish that its bid was deposited prior to bid opening. Therefore, in order to preserve the integrity of the competitive process, we must conclude that the bid may not be considered for the award. See S. Puma and Company, B-182936, April 17, 1975, 75-1 CPD 230.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States